

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

AERITAS, LLC,

Plaintiff

v.

FOOT LOCKER, INC.,

Defendant

Case No. 6:19-cv-00189

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Aeritas, LLC (“Aeritas” or “Plaintiff”) files this Complaint for patent infringement against Foot Locker, Inc. (“Foot Locker” or “Defendant”), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under 35 U.S.C. § 1 *et seq.*

PARTIES

2. Aeritas is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

3. Upon information and belief, Defendant, Foot Locker, is a corporation organized and existing under the laws of the State of New York with a principal place of business in this judicial district at 2901 S Capital of Texas Hwy Suite H15, Austin, TX 78746.

JURISDICTION AND VENUE

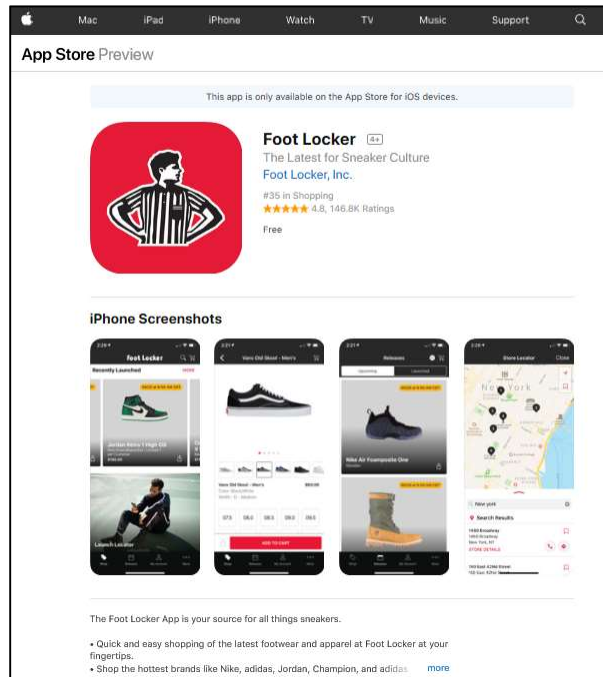
4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Defendant is subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and this judicial district and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

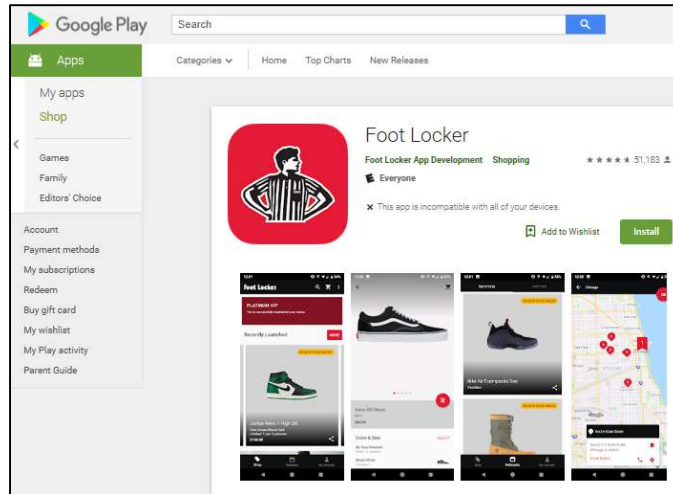
6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Defendants have committed acts of infringement and have regular and established places of business in this judicial district.

OVERVIEW OF THE FOOT LOCKER APP

7. Defendant provides for its customers use the Foot Locker App, which is available for use with iOS and Android devices:

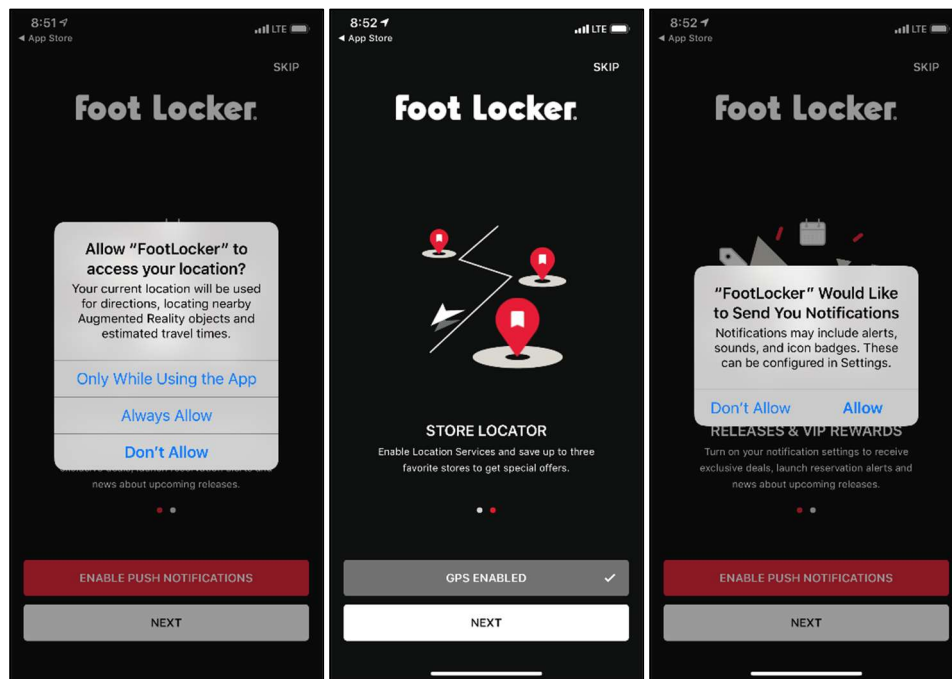


<https://itunes.apple.com/us/app/foot-locker/id934030757?mt=8>



https://play.google.com/store/apps/details?id=com.footlocker.approved&hl=en_US

8. To enable use of the enhanced features of the Foot Locker App, Foot Locker requires to user to enable location and notification services, which allows Foot Locker to determine the location of the user's device and to push notifications to the user's device:



(Screen shots of Foot Locker App illustrating enabling location and notification features)

9. Foot Locker hosts a server that interfaces with the Foot Locker App. With the Foot Locker App and server, Foot Locker establishes a profile for the user. A benefit provided to users

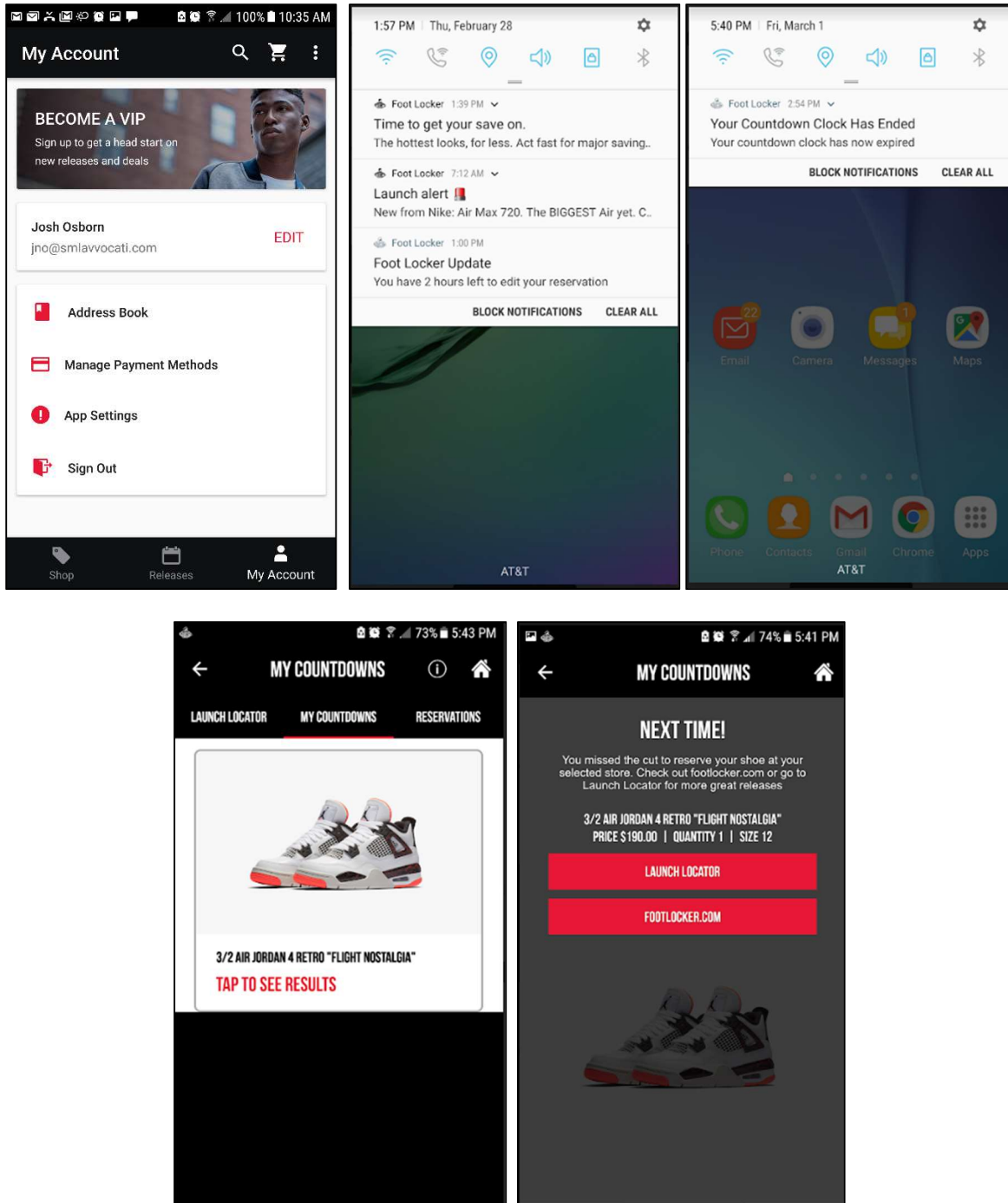
with an established profile is VIP status. Users with VIP status can receive push notifications tailored to the user's interests, can check into Foot Locker stores, and can identify the nearest Foot Locker store that has particular desired inventory in stock.

The Foot Locker App is your source for all things sneakers.

- Quick and easy shopping of the latest footwear and apparel at Foot Locker at your fingertips.
- Shop the hottest brands like Nike, adidas, Jordan, Champion, and adidas Originals.
- Stay ahead of the game with the Release Calendar. Add reminders to your own calendar to never miss a drop of the hottest kicks.
- Enable push notifications for your chance at new shoe releases as soon as they go live.
- Launch Reservation gives you a chance at reserving the hottest sneakers for in-store pickup the day they release.
- Become a Foot Locker VIP! As a Foot Locker VIP, you can access your account, track your order status and spending, check your rewards, and stay up to date on hot shoe releases.
- As a VIP, you will be sent exclusive offers including an annual birthday discount and early access to sales. Platinum VIPs are automatically upgraded and receive additional rewards to use on purchases as well as access to exclusive events and giveaways.
- Get an in-app VIP card to scan in stores.
- Find the nearest Foot Locker stores with the Store Locator.

Shop Foot Locker anytime, anywhere!

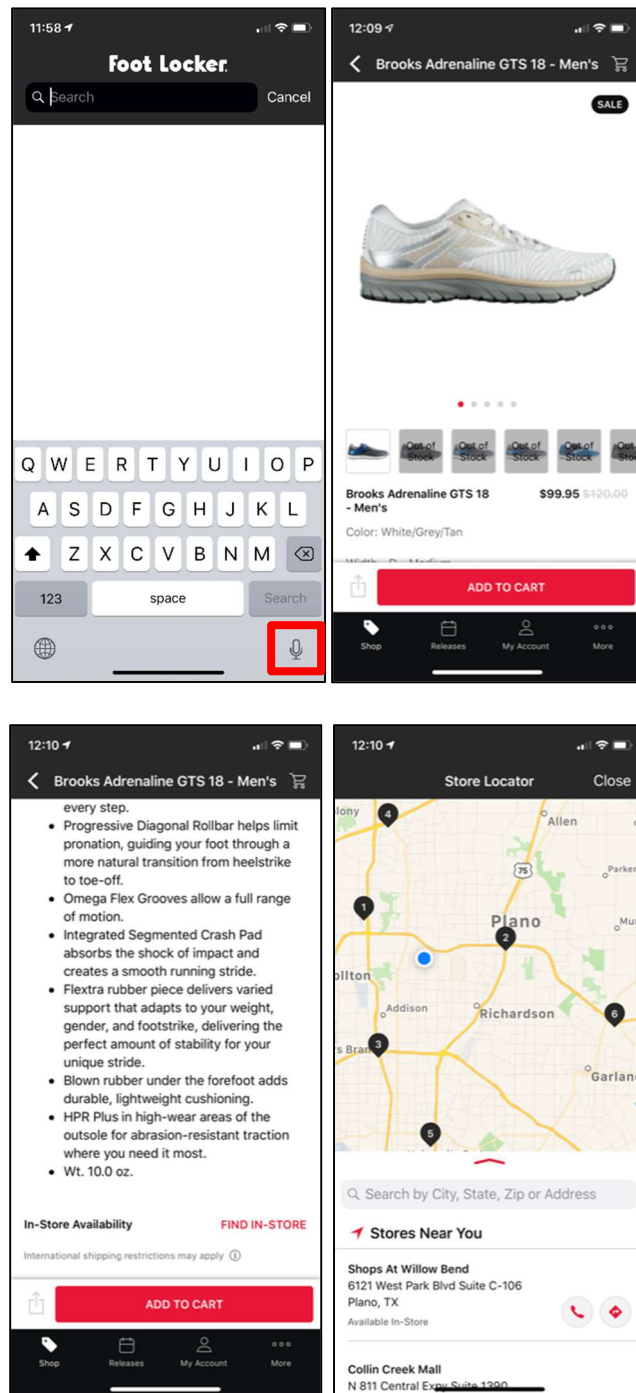
https://play.google.com/store/apps/details?id=com.footlocker.approved&hl=en_US



(Screen shots of Foot Locker App illustrating features of the Foot Locker user profile)

10. With the Foot Locker App, users are able to search for items using spoken voice input. The Foot Locker App provides a return result for the searched item that includes links to additional information in a drill-down menu. The Foot Locker App additionally provides a link to

a store locator function that identifies nearby Foot Locker stores that have the selected item in stock.



(Screen shots of Foot Locker App illustrating features of the Foot Locker user profile)

11. With the Foot Locker App and locations services enabled, users are able to check into local Foot Locker stores to obtain additional benefits and notifications, including reserving selected shoes and use of the “countdown” feature.

Q:	Why do I need to enable my location services?
A:	We will use your location to locate stores closest to you (within 100 miles) in order to show you the launches available in store locations near you, as well as corresponding launch procedure at those locations.

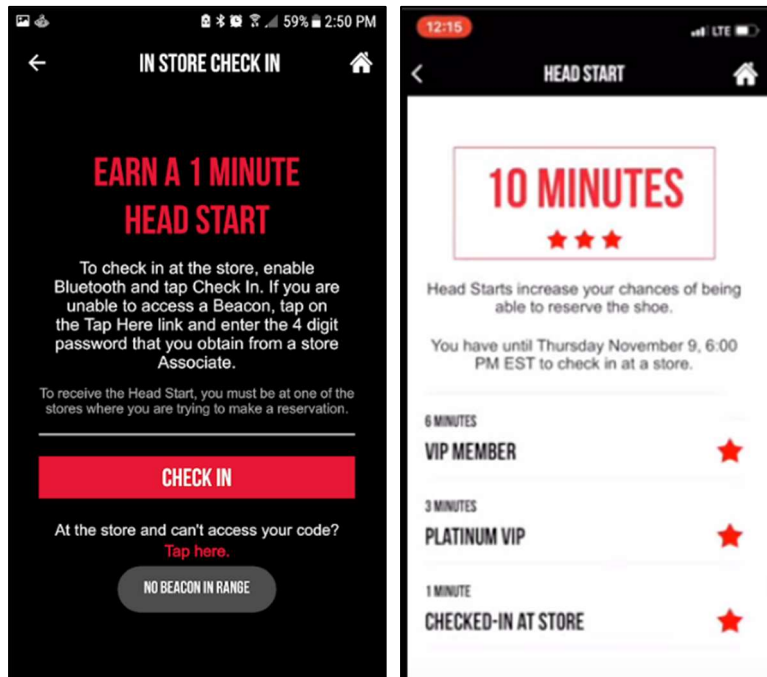
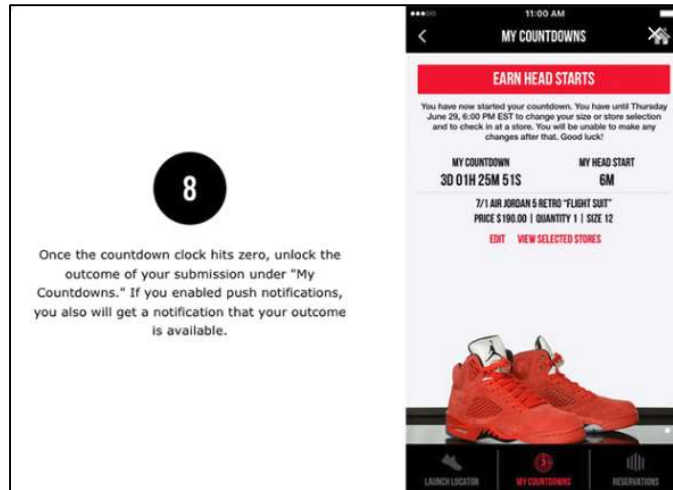
Q:	Can I reserve in more than one store?
A:	No, but you can attempt to reserve the shoes in up to three stores. If your reservation submission is successful, you will only be notified for one of the three stores selected. You will not be awarded reservations at multiple stores for the same shoe.

Q:	How am I notified of the outcome once my countdown clock expires?
A:	You will receive a push notification at the time your countdown clock expires alerting you to go into the app to unlock the outcome of your reservation submission. You must go into Launch Locator under ‘My Countdowns’.
Q:	Do I need to be on a specific app version to participate in the launch locator and reservation process?
A:	Yes, you need to have version 2.1.0 or higher.
Q:	Why should I enable push notifications?
A:	We will use push notifications to alert you of a number of things related to the releases, most importantly when your countdown clock has expired and we remind you to check your reservation status in the app within 3 hours to confirm whether or not you want the shoe.

<https://www.footlocker.com/ns/showcases/launch-reservation/FLAppFAQ%20v5.pdf>

Get Started with Beacons		☆☆☆☆☆
Contents		
Obtain and configure beacons		
1. Get some beacons		
2. Configure your beacons		
3. Register your beacons with Google		
4. Add an attachment		
This guide explains the steps required to start using Bluetooth low energy (BLE) beacons to provide proximity-based experiences for your users.		

<https://developers.google.com/nearby/notifications/get-started>



<https://www.youtube.com/watch?v=N7ow0F9AMTo>

COUNT I
(Infringement of U.S. Patent No. 7,706,819)

12. Aeritas incorporates paragraphs 1 through 11 as though fully set forth herein.

13. Plaintiff is the owner, by assignment, of U.S. Patent No. 7,706,819 (the “’819 Patent”), entitled MIXED-MODE INTERACTION, which issued on April 27, 2010. A copy of the ’819 Patent is attached as Exhibit A.

14. The ’819 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

15. Defendants have been and are now infringing one or more claims of the ’819 Patent under 35 U.S.C. § 271 by making and using the Foot Locker App with users’ iOS and Android devices and the Foot Locker server in the United States without authority.

16. Defendant has also infringed the ’819 Patent by encouraging users of the Foot Locker App to use the user’s iOS or Android devices with the Foot Locker App to practice the claims of the ’819 Patent.

17. Claim 1 recites:

1. A method comprising:
receiving spoken input from a wireless communication device;
obtaining data identifying a current location of the wireless communication device;
based on the current location of the wireless communication device and the spoken input, retrieving information;
delivering, to the wireless communication device by a notification server, a non-verbal response to the spoken input, the non-verbal response based on the retrieved information and including a drill-down menu by which additional information related to the retrieved information can be obtained; and

providing additional information related to the retrieved information in response to receipt of at least one additional input provided via the drill-down menu.

18. More particularly, Defendants infringe at least claim 1 of the '819 Patent. Defendants receive spoken input from a wireless communication device (e.g., when a user searches for a location or specific store using voice input). Defendants obtain data identifying the current location of the mobile device (e.g., as evidenced by permissions required to access the device's location and subsequent provision of location-based information and the location of the device on a search result map). Based on the location and the spoken input, Defendants retrieve information (e.g., the nearby availability of stores subject to the voice search). Defendants deliver to the wireless device by a notification server, a non-verbal response to the spoken input, the non-verbal response based on the retrieved information and including a scroll-down menu by which additional information related to the retrieved information can be obtained (e.g., the nearby stores subject to the voice search, distance to mobile device). Defendants provide additional information related to the retrieved information in response to receipt of at least one additional input provided via the scroll-down menu (e.g., distance and other information about nearby stores in response to selection of the "nearest" link).

19. Aeritas has been damaged by Defendant's infringing activities.

COUNT II
(Infringement of U.S. Patent No. 8,055,285)

20. Aeritas incorporates paragraphs 1 through 11 as though fully set forth herein.

21. Plaintiff is the owner, by assignment, of U.S. Patent No. 8,055,285 (the "'285 Patent"), entitled MIXED-MODE INTERACTION, which issued on November 8, 2011. A copy of the '285 Patent is attached as Exhibit B.

22. The '285 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

23. Defendants have been and are now infringing one or more claims of the '285 Patent under 35 U.S.C. § 271 by making and using the Foot Locker App with users' iOS and Android devices and the Foot Locker server in the United States without authority.

24. Defendant has also infringed the '285 Patent by encouraging users of the Foot Locker App to use the user's iOS or Android devices with the Foot Locker App to practice the claims of the '285 Patent.

25. Claim 1 recites:

1. A method, comprising:

at a first time, receiving and storing an input in a user profile in a database,

the input comprising consumer interest data;

at a second time distinct from the first time, obtaining data identifying a

current location of the mobile communication device;

based on the input stored in the user profile and the current location of the

mobile communication device, initiating a search to locate
information pertinent to the input;

receiving results derived from the search; and

in response to the input and the search, delivering, by a notification server,
information to the mobile communications device.

26. More particularly, Defendants infringe at least claim 1 of the '285 Patent. Defendants receive and store an input in a user profile in a database, the input comprising consumer interest data (e.g., items in "Favorites"). At a second time, data identifying a current location of

the mobile communications device on which the Accused Instrumentality is installed is obtained (e.g., upon application launch or return to Favorites). Based on the input and location, Defendants perform a search to locate pertinent information (e.g., selection of “Favorites” from the results in a search for nearby stores) and receive the results of such search, distance from mobile device. Defendants then provide the information to the mobile communications device.

27. Aeritas has been damaged by Defendant’s infringing activities.

COUNT III
(Infringement of U.S. Patent No. 9,888,107)

28. Aeritas incorporates paragraphs 1 through 11 as though fully set forth herein.

29. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,888,107 (the “’107 Patent”), entitled MIXED-MODE INTERACTION, which issued on February 6, 2018. A copy of the ’107 Patent is attached as Exhibit C.

30. The ’107 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

31. Defendants have been and are now infringing one or more claims of the ’107 Patent under 35 U.S.C. § 271 by making and using the Foot Locker App with users’ iOS and Android devices and the Foot Locker server in the United States without authority.

32. Defendant has also infringed the ’107 Patent by encouraging users of the Foot Locker App to use the user’s iOS or Android devices with the Foot Locker App to practice the claims of the ’107 Patent.

33. Claim 5 recites:

5. Apparatus, comprising:

a processor;

computer memory holding computer program instructions to:

receive first data indicating a permission to provide a mobile device user a notification, the notification having an associated notification criteria;

at a given time, determine a location of a mobile device;

based at least in part on a determined location of the mobile device and the notification criteria, to provide to the mobile device the notification, the notification being associated at the mobile device with one of: an audible, visual and tactile alert;

receive second data as a result of an input being received at the mobile device following the notification;

retrieve information associated with the input and the determined location of the mobile device; and

provide to the mobile device a response to the input, the response based on the retrieved information;

wherein the computer program instructions comprise a rules engine that comprises first and second components, a first component that evaluates the notification criteria, and a second component that executes notification rules.

34. More particularly, Defendants infringe at least claim 5 of the '107 Patent. On information and belief, Defendants employ a processor and computer memory holding computer program instructions to perform the functions described herein. Defendants receive data indicating permission to provide a notification to a mobile device user in accordance with notification criteria (e.g., according to App notification settings). At a given time, Defendants determine the location

of the mobile device (e.g., as evidenced by permissions required to access the device's location and subsequent provision of location-based information). Based on the location and notification criteria, Defendants provide at least a visual alert notification (e.g., a push notification to the mobile device when a user arrives at a Foot Locker store). Defendants receive second data as a result of an input being received at the mobile device (e.g., interaction with the notification), retrieve information associated with the input and location (e.g., information about the specific Foot Locker store), and provide responsive information to the mobile device (e.g., store information). On information and belief, the program instructions include first and second components of a rules engine to evaluate notification criteria and execute notification rules (e.g., as evidenced by the provision of a notification based on conditions).

35. Aeritas has been damaged by Defendant's infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Defendant:

1. declaring that the Defendant has infringed the '819, the '285, and the '107 Patents;
2. awarding Plaintiff its damages suffered as a result of Defendant's infringement of the '819, the '285, and the '107 Patents;
3. awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and
4. granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: March 5, 2019

Respectfully submitted,

/s/ Raymond W. Mort, III

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